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BEFORE THE ARIZONA CORPORATION COMMISSION
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Arizona Corporation Commission

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IN THE MATTER OF THE FORMAL
COMPLAINT OF CHARLES J. DAINS AGAINST
RIGBY WATER COMPANY

DOCKET NO. W-01808A-09-0137

**REPLY TO RESPONSE OF RIGBY
WATER COMPANY**

1 The Estate of Charles J. Dains ("Dains Estate") hereby replies to "Rigby Water
2 Company's Response to Motion to Admit Late-Filed Exhibits and Alternative Request to Admit
3 Additional Late-Filed Exhibits," dated October 28, 2010. The Dains Estate does not object to the
4 admission of proposed exhibits RWC-15 or RWC-16.

5 Normally, the Dains Estate would wait for briefs to argue how a particular exhibit should
6 be interpreted. However, because Rigby has argued how to interpret certain of the proposed late-
7 filed exhibits, the Dains Estate will briefly reply to these arguments.

8 **Exhibit Dains 12.** This document is an August 28, 1985, Approval to Construct for
9 Terra Ranchettes Estates. Based on this document, Rigby somehow concludes that
10 "Complainant could have developed the subject parcel in 1985 but chose not to." This is
11 nonsense. Rigby ignores Exhibit CDD-2, attached to Mr. Dains' testimony (Dains-1), a 1985
12 letter from the Maricopa County Health Department to the Terra Ranchettes Estates Partnerships.
13 The letter states that the County cannot forward the subdivision plans to the State Real Estate
14 Department because "Rigby Water Company 'is not in compliance with the Safe Drinking Water
15 Act of Arizona.'" As Mr. Dains testified, Rigby remained non-compliant for many years, which
16 prevented subdivision development. Clearly, it would have been poor business to proceed with

1 construction of the water system until Rigby complied with State law and the partnership was
2 able to get its subdivision plan approved.

3 **Exhibit Dains 13.** This document is a copy of a May 2, 1996, memo from the Maricopa
4 County Environmental Services Department, which states that the previously-issued Certificate
5 of Approval to Construct has been reinstated. Amazingly, Rigby claims that this document
6 proves that "Rigby Water Company was never provided with the Approval to Construct required
7 by the Commission for approval of the mainline extension agreement." To the contrary, the
8 document establishes Rigby's negligence: the partnership obtained the Approval to Construct
9 and it was readily available to Rigby.

10 The Dains Estate disputes Rigby's claim that it was not provided the Approval to
11 Construct, but the claim itself is not relevant. It was Rigby's burden to file the Main Extension
12 Agreement along with the Approval to Construct. The reinstated Approval to Construct was
13 issued on May 2, 1996, yet the Main Extension Agreement was not executed until May 5, 1999,
14 over three years later. If Rigby could not obtain a copy of the Approval to Construct from Mr.
15 Dains (which the Dains Estate disputes), then Rigby could easily have attained a copy from the
16 County during this three-year period. Rigby cannot hide behind its own negligence.

17 **Exhibit RWC 15.** Proposed Exhibit RWC 15 is a copy of a Water Report signed and
18 sealed by James M. Samer on February 24, 1996. Rigby claims that this document "indicates
19 that construction of the Terra Ranchette Estates Subdivision required the installation of an
20 additional 50,000 gallons of storage capacity." Rigby misreads that Water Report.

21 The Water Report actually states:

22 The proposed subdivision will require an assured supply of 400 gallons per day
23 per lot. The 83 lots in this subdivision will require 33,200 gallons per day. The
24 Rigby Water Company has about 120 additional customers on this facility which
25 would add 48000 gallons per day. Thus a supply of 81,200 gallons per day will be
26 required to adequately serve the new customers and the existing users.

27 ...

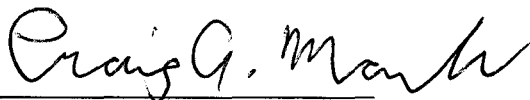
28 In as much as the calculated requirements is 81,200 gallons, and the current
29 capacity is 35,000 gallons, a 50,000 gallons storage tank will be added to the
30 capacity.

1 Thus, it is very clear that the 50,000 gallon storage tank would be used to serve existing
2 customers as well as the new Terra Mobile Ranchettes Estates customers.

3 The document further confirms that Rigby did not have capacity to serve existing
4 customers. Only about 20,000 gallons of storage capacity was needed to serve the new Terra
5 Mobile Ranchettes Estates customers. $\{[(83 \text{ TMRE customers}) \div (83 \text{ TMRE customers} + 120$
6 $\text{existing Rigby customers})] \times [50,000 \text{ gallons}] = 20,443 \text{ gallons}\}$. The additional 30,000 gallons
7 of storage capacity was needed for existing customers.

8 Rigby was unjustly enriched by requiring the partnership to fund and construct a 50,000
9 gallon storage tank.

10 RESPECTFULLY SUBMITTED on November 4, 2010.

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